



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties  
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



Arnold Schwarzenegger  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 23, 2008

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**  
7007 1490 0003 8753 6008

Mark Stiefel  
3270 Holland Road  
Winchester, CA 92596

In reply refer to:  
**CRU: 9 000000452: MMATA**

Dear Mr. Stiefel:

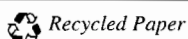
**SUBJECT: TENTATIVE ORDER NO. R9-2008-0125; AN ORDER RESCINDING  
ORDER NO. R9-2007-0009, NPDES NO. CA0109011, WASTE  
DISCHARGE REQUIREMENTS FOR JACK AND MARK STIEFEL  
DAIRY, RIVERSIDE COUNTY**

The federal court of appeals recently made a ruling that appears to exempt your dairy operation from the need to be regulated under NPDES permit. Enclosed is a copy of Tentative Order No. R9-2008-0125 which if adopted by the Regional Board would rescind NPDES permit requirements for your dairy operation as contained in Order No. R9-2007-0009, NPDES No. CA0109011 consistent with the recent court ruling. Regional Board staff wishes to present Tentative Order No. R9-2008-0125 to the Regional Board for their consideration and adoption at their regularly scheduled meeting on November 12, 2008. This proposed action is based on our understanding that there is no discharge of pollutants to surface waters from your dairy operation

## **BACKGROUND**

In 2003, the United States Environmental Protection Agency (USEPA) published revisions to its Clean Water Act regulations governing waste discharges to surface waters from concentrated animal feeding operations (CAFOs). Pursuant to these regulations your dairy operation was classified as a concentrated animal feeding operation (CAFO) and you were required to apply for and comply with a National Pollutant Discharge Elimination System (NPDES) permit. The US Court of Appeals, Second Circuit recently issued a ruling providing that only a person who "discharges or proposes to discharge pollutants" to waters of the United States (i.e. surface waters) needs to apply for and comply with an NPDES permit. Our review of this ruling indicates that your dairy operation may no longer be subject to the need for regulation under NPDES permit because we understand that there is no waste discharge to surface waters from your dairy operation.

*California Environmental Protection Agency*



Waste discharges associated with your dairy operation still have the potential to affect the quality of the waters (i.e. ground water) of the State. Pursuant to Division 7 of the California Water Code the Regional Board will be considering regulating your dairy operation under state waste discharge requirements (WDRs) or a conditional waiver of WDRs as a separate action in the near future following the rescission of your NPDES permit, Order No. R9-2007-0009, NPDES No. CA0109011. We will provide you with further details of the Board's plans in this regard under separate cover in the near future.

There are some significant advantages to you transferring regulation of your dairy from NPDES permit to state waste discharge requirements or waiver. Advantages to obtaining WDRs include a reduction in the number of applications you will need to submit (NPDES permits expire every 5 years and require reapplication where waste discharge requirements do not expire), reduced monitoring requirements, and no comprehensive detailed nutrient management plan (as required by USEPA).

#### **NO POTENTIAL TO DISCHARGE TO SURFACE WATERS CERTIFICATION FORM**

If you wish the Regional Board to consider rescission of your NPDES permit at the November 12, 2008 meeting you must first complete the enclosed *No Potential to Discharge to Surface Water Determination Request* form and submit it to the Regional Board for review. Your completion and submittal of this form will be used to confirm our understanding that there is no waste discharge to surface waters from your dairy operation. Please complete and submit the form to Michelle Mata, Water Resource Control Engineer at the letterhead address as soon as possible and no later than **October 29, 2008**.

#### **NOVEMBER 12, 2008 BOARD MEETING**

The November 12, 2008 Board meeting will begin promptly at 9:00 a.m. and will be held at the following location:

Water Quality Control Board  
Regional Board Meeting Room  
9174 Sky Park Court  
San Diego, California

Please review and comment on the tentative order at your earliest convenience. It is recommended that written comments be submitted as soon as possible to enable staff to amend the tentative order, if necessary, and allow changes to the tentative order to be fully reviewed by the Regional Board and interested parties. To ensure that the Regional Board has the opportunity to fully study and consider written material, comments should be received by the Regional Board no later than 5:00 p.m. on October 22, 2008. The final deadline for submittal of written comments, however, is


***California Environmental Protection Agency***

**October 29, 2008.** Per Regional Board direction, written material submitted to the Regional Board office after the submittal deadline date will not be provided to the Regional Board. Also, it is not likely that written material will be accepted by the Regional Board on the day of the meeting.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions or comments, please contact Michelle Mata at (858) 467-2981 or via email at [mmata@waterboards.ca.gov](mailto:mmata@waterboards.ca.gov).

Respectfully,



David T. Barker  
Supervising Engineer

DTB:bdk:mm

Enclosures: 1) *No Potential to Discharge to Surface Water Determination Request* form  
2) Tentative Order No. R9-2008-0125

cc:

Kate Rao, USEPA Region 9 (via email)

# NO POTENTIAL TO DISCHARGE TO SUFACE WATER DETERMINATION REQUEST

## I. OWNER/OPERATOR INFORMATION

### A. CONTACT INFORMATION

Owner/or  
Operator Name: Mark Stiefel  
Address 32750 Holland Road  
City: Winchester  
State: CA Zip Code: 92596  
Telephone: ( 909 ) 926-4655  
Facsimile: (      )                     

### B. FACILITY STATUS

Check one:  
☐ 1. Existing Facility  
☐ 2. Proposed Facility

## II. FACILITY INFORMATION

### A. GENERAL INFORMATION

Name: Jack and Mark Stiefel Dairy Telephone: (      )                       
Address: 32750 Holland Road Facsimile: (      )                       
City: Winchester State: CA Zip Code: 92596  
County: Riverside

1. Has this operation had a discharge of manure, litter, or process wastewater to waters of the United States in the past 5 years? ☐ No ☐ Yes

2. Has there ever been a discharge at this operation? ☐ No ☐ Yes

If yes, explain the circumstances of the discharge and the actions that have been taken to ensure that no future discharges will occur at this operation.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### B. ANIMALS IN CONFINEMENT

Complete the following table to show the maximum number of each type of animal confined at any one time and the type of confinement structure used for each (e.g., open feedlot, under roof, etc.).

Type	No. of Animals	Type of Confinement
Mature Dairy Cows		
Dairy Heifers		
Other Cattle		
Swine		
Other: (specify) _____		

## NO POTENTIAL TO DISCHARGE TO SUFACE WATER DETERMINATION REQUEST

### III. ADDITIONAL INFORMATION

Provide a statement describing the conditions and/or practices at your dairy that eliminate the potential to discharge pollutants to surface waters of the United States. (Such information might include precipitation data and/or maps, soil conditions, soil maps, hydrologic conditions, distance to surface waters of the U.S., or site-specific management or waste treatment practices.) Attach additional sheets, if needed.

---

---

---

---

---

Please identify all documentation provided with this No Potential to Discharge determination request.

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

### IV. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage this system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Submit to California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego , California, 92123-4340

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION  
TENTATIVE  
ORDER NO. R9-2008-0125**

**AN ORDER RESCINDING ORDER NO. R9-2007-0009, NPDES NO. CA0109011  
WASTE DISCHARGE REQUIREMENTS  
FOR JACK AND MARK STEIFEL DAIRY  
RIVERSIDE COUNTY**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. On January 24, 2007, the Regional Board adopted *Order No. R9-2007-0009, NPDES No. CA0109011, Waste Discharge Requirements for Jack and Mark Stiefel Dairy, Riverside County*. Order No. R9-2007-0009 established requirements for waste associated with manure litter, and wash water from production areas; manure from storage piles and land application areas; and nutrient laden storm water. The facility is permitted to discharge and manage waste volumes not exceeding those attributable to a mature milking cow herd of 1,500 cows being milked twice per day to retention ponds.
2. Jack and Mark Stiefel Dairy (Facility) is identified as a large concentrated animal feeding operation (Large CAFO) pursuant to 40 CFR 122.23. An animal feeding operation (AFO) is defined as a lot or facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in a 12-month period; and (2) where crops, vegetation, forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. An AFO is defined or designated as a CAFO based on the number of animals at the facility and/or whether the facility discharges to waters of the United States.
3. On February 2003, the United States Environmental Protection Agency (USEPA) revised the effluent limitations and permitting regulations for CAFOs. The 2003 rule eliminated the exemption for operations that discharge only in a large 25-year, 24-hour storm event, and added requirements for land application areas under the control of the CAFO (68 FR 7176). The 2003 CAFO rule required any CAFO with a potential to discharge manure, litter, or process wastewater to waters of the U.S. to apply for an NPDES permit.
4. On February 28, 2005, the Second Circuit issued a decision in *Waterkeeper Alliance et al. v. EPA* regarding challenges to the 2003 rule. Among its decisions, the court vacated the 2003 rule requirement that

CAFOs must apply for permits or demonstrate that they do not have the potential to discharge. A "No Potential to Discharge to Surface Water Determination Request" has been submitted to the Regional Board for the Jack and Mark Stiefel Dairy. The Regional Board concurs that this facility does not discharge pollutants to waters of the United States.

5. The discharge of waste from the above mentioned facility has the potential to cause or contribute to exceedances of applicable water quality objectives of groundwaters and as such, may be required to obtain Waste Discharge Requirements or a waiver of Waste Discharge Requirements.
6. The Regional Board has notified all known interested parties of its intent to rescind Order No. R9-2007-0009.
7. The Regional Board, in a public hearing, heard and considered all comments pertaining to the rescission of Order No. R9-2007-0009.
8. This action to rescind an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177 pursuant to California Water Code section 13389.

IT IS HEREBY ORDERED that Order No. R9-2007-0009 is rescinded.

*I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Board, San Diego Region, on November 12, 2008.*

**TENTATIVE**

\_\_\_\_\_  
JOHN H. ROBERTUS  
Executive Officer